

FILED  
BILLINGS DIV.

IN THE UNITED STATES DISTRICT COURT

2007 MAY 25 AM 9 49

FOR THE DISTRICT OF MONTANA

PATRICK E. DUFFY, CLERK

BILLINGS DIVISION

BY \_\_\_\_\_  
DEPUTY CLERK

**CHARLES ELLIS SHIRLEY,**

)

**CV-06-161-BLG-RFC**

)

**Plaintiff,**

)

**vs.**

)

**ORDER**

)

**DAWSON COUNTY ADULT  
CORRECTIONAL FACILITY,**

)

)

**Defendant.**

)

)

On April 13, 2007, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation in this 42 U.S.C. § 1983 action against Dawson County, Montana. Magistrate Judge Ostby recommends the Court dismiss this case pursuant to Local Rule of Procedure 5.4 on the grounds that mail sent to Plaintiff by the Court has been returned undeliverable.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). However, in prisoner cases, this Court extends the time to object to twenty days in order to take into account the somewhat greater mailing time that is involved in sending documents into and out of a prison facility. Because neither party objected to the Findings and Recommendations, this Court may assume the correctness of Magistrate Judge Ostby's findings of fact and decide the motion with a de novo review of the applicable law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989) (*overruled on other*

*grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir.1996)).

Local Rule of Procedure 5.4(a) requires pro se litigants to “promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address.” Local Rule 5.4(b) provides the Court may dismiss complaints without prejudice when mail directed to a pro se party is returned to the Court as not deliverable. Magistrate Judge Ostby finds that both the Notice of Case Opening and Standing Order No. DWM-48 were returned as undeliverable mail after being mailed to Plaintiff’s last known address. Magistrate Judge Ostby further finds the Court has been unable to find any record of a Charles Shirley in the Montana or federal prison databases.

After a de novo review of the law, it is clear Magistrate Judge Ostby’s Findings and Recommendation (*Doc. 6*) are well-grounded in law and fact. They are adopted in their entirety. Accordingly **IT IS HEREBY ORDERED** that Plaintiff’s Complaint (*Doc. #1*) is **DISMISSED WITHOUT PREJUDICE** for failure to keep the Court informed of his current mailing address.

The Clerk of Court shall notify the parties of the making of this Order and close this case accordingly.

DATED this 25 day of May, 2007.



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RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE